

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

TRISTAR INVESTORS, INC.,

Plaintiff,

v.

AMERICAN TOWER CORPORATION,
AMERICAN TOWERS LLC, AMERICAN
TOWERS INC., AMERICAN TOWER
GUARANTOR SUB, LLC, AMERICAN
TOWER HOLDING SUB, LLC, AMERICAN
TOWER ASSET SUB, LLC, AMERICAN
TOWER ASSET SUB II, LLC, AMERICAN
TOWER MANAGEMENT, LLC,
AMERICAN TOWER L.P., SPECTRASITE
COMMUNICATIONS, LLC, and
AMERICAN TOWER, LLC,

Defendants.

AMERICAN TOWER, LLC, SPECTRASITE
COMMUNICATIONS, LLC, and
AMERICAN TOWERS, LLC,

Counter-Plaintiffs,

v.

TRISTAR INVESTORS, INC., DAVID IVY,
ED WALLANDER, ROBERT GILES, DALE
GILARDI, JERRY VOGL, JOHN
LEMMON, MICHAEL MACKEY, and
MATT NEWTON,

Counter-Defendants.

CIVIL ACTION NO. 3:12-CV-499

**AMERICAN TOWER DEFENDANTS' SECOND NOTICE OF SUPPLEMENTAL
AUTHORITY IN SUPPORT OF MOTION TO MODIFY THE SCHEDULING
ORDER AND FOR CONTINUANCE OF THE TRIAL DATE**

Defendants (“American Tower”) submit this Second Notice of Supplemental Authority in Support of their Motion to Modify the Scheduling Order and for Continuance of the Trial Date (Doc. 138) to advise the Court that (i) SBA Communications has acknowledged that it cannot timely comply with its obligation to produce responsive documents; and (ii) on May 22, 2013, the United States District Court in Connecticut ordered another TriStar owner, Wood Creek Capital, to produce documents to American Tower within fourteen days.

As previously briefed, SBA and Wood Creek refused to comply with American Tower’s subpoenas, thereby necessitating the filing of motions to compel against Wood Creek (in November 2012) and SBA (March 2013). On May 22, 2013, the United States District Court for the District of Connecticut granted American Tower’s Motion to Compel against Wood Creek.¹ See Appendix at 6-7. Essentially, that court ordered Wood Creek to produce the same categories of documents that two district courts had ordered three other TriStar shareholders to produce months ago. The court further rejected Wood Creek’s argument that American Tower’s motion to compel was premature and thus denied Wood Creek’s request for attorney’s fees.

On May 10, 2013, the United States District Court for the Southern District of Florida granted American Tower’s Motion to Compel and ordered SBA to complete its document production within fourteen days. See Doc. 163. That same day, SBA retained an e-discovery vendor, which began to identify and collect electronically stored information to produce in response to the court’s order three days later. See Appendix at 10-13 (Declaration of Erik Laykin ¶¶ 6, 10). According to SBA’s e-discovery expert, certain responsive SBA information simply is not collectable within the time frame set by the Southern District of Florida court but

¹ The District of Connecticut granted the motion to compel with respect to Requests 7, 8, 13, 15, 18, and 24, granted it in part as to Requests 17, 19 and 20, denied it as to only two requests (4 and 14), and denied two additional requests (11 and 12) as moot. See Appendix at 6-7.

instead will take several weeks to gather. *See id.* at 14-15, 17 (Laykin Decl. ¶¶ 13-14, 23). Even as to the information that SBA’s e-discovery vendor has been able to collect and process for the initial set of custodians that SBA identified, SBA was not able to begin its review that information until May 24, *see id.* at 16 (Laykin Decl. ¶ 21), the date originally set by the Florida court for production to American Tower.

Finally, on May 13, 2013, Magistrate Judge Ramirez granted American Tower’s motion to compel TriStar to provide “complete answers to Interrogatories Nos. 1 and 2 of the defendant’s third set of interrogatories” by May 27. (Doc. 165) The critical nature of those interrogatories was discussed in American Tower’s Motion to Modify (Doc. 138 at 16-19). These interrogatories were served on February 4, 2013, the subject of a meet-and-confer and March 15, 2013 Agreed Order requiring TriStar to supplement its initial responses (Doc. 123 at 3), and then the subject of a motion to compel when TriStar’s supplemental answers in response to the March 15th Order were deficient (Doc. 140).

Following the completion of their respective document productions, American Tower intends to depose one or more representatives of SBA and Wood Creek. (*See* Doc. 138 at 15-16) Following the receipt of TriStar’s “complete” interrogatory answers, American Tower likely will take the depositions of certain identified landowners. (*See* Doc. 138 at 18) This critical discovery cannot take place prior to the current deadlines for initial expert designations (June 26, 2013) and dispositive motions (July 1, 2013).

Dated: May 30, 2013

Respectfully submitted,

/s/ Jon G. Shepherd

Jon G. Shepherd
Texas State Bar No. 00788402
Courtney L. Gilbert
Texas State Bar No. 24066026
ALSTON & BIRD, LLP
2828 N. Harwood Street, Ste. 1800
Dallas, TX 75201
Telephone: (214) 922-3400
Facsimile: (214) 922-3899
jon.shepherd@alston.com
courtney.gilbert@alston.com

David M. Rownd (*Pro Hac Vice*)
Illinois State Bar No. 6207951
THOMPSON COBURN, LLP
55 E. Monroe Street, 37th floor
Chicago, IL 60603
Telephone: (312) 580-2311
Facsimile: (312) 580-2201
drownd@thompsoncoburn.com

Michael L. Nepple (*Pro Hac Vice*)
Missouri State Bar No. 42082
Edwin G. Harvey (*Pro Hac Vice*)
Missouri State Bar No. 30565
Jason A. Wheeler (*Pro Hac Vice*)
Missouri State Bar No. 52298
THOMPSON COBURN, LLP
One US Bank Plaza
St. Louis, MO 63101
Telephone: (314) 552-6149
Facsimile: (314) 552-7000
mnepple@thompsoncoburn.com
eharvey@thompsoncoburn.com
jwheeler@thompsoncoburn.com

Andrew P. Fishkin (*Pro Hac Vice*)
New York State Bar No. 2234714
FISHKIN LUCKS LLP
One Riverfront Plaza, Suite 220
Newark, NJ 07102
Telephone: (973) 536-2800
Facsimile: (973) 679-4435
afishkin@fishkinlucks.com

COUNSEL FOR DEFENDANTS/
COUNTER-PLAINTIFFS

CERTIFICATE OF SERVICE

On May 30, 2013, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all counsel and/or pro se parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Jon G. Shepherd
Jon G. Shepherd